

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

RULING: Defense Motion
To Merge Charges as
Unreasonable Multiplication
of Charges for Findings
and Sentence

6 August 2013

On 30 July 2013, the Defense filed three motions to merge specifications for unreasonable multiplication of charges (UMC) for findings and sentence (AE 626-628) seeking the following relief:

1. Merge specifications 4 and 6 of Charge II for findings because the stealing, purloining, or knowing conversion (SPKC) of both the CIDNE-Iraq (CIDNE-I) and CIDNE-Afghanistan (CIDNE-A) databases were one transaction.

2. Merge specifications 5 and 7 of Charge II for findings because the accused communicated the CIDNE-I and CIDNE-A databases as one transaction.

3. Merge the following categories of specifications for sentencing:

a. Article 134 (18 U.S.C. §641) with Article 134 (18 U.S.C. §793(e)) and Article 134 (18 U.S.C. § 1030(a)(1)) offenses as the SPKC and communication involve the same databases:

(1) Specifications 4 and 5 of Charge II: the CIDNE-I database containing more than 380,000 records belong to the United States government and Specifications 6 and 7 of Charge II: the CIDNE-A database containing more than 90,000 records belonging to the United States government;

(2) Specifications 8 and 9 of Charge II: the United States Southern Command database containing more than 700 records belonging to the United States government;

(3) Specifications 12 and 13 of Charge II: the Department of State Net-Centric Diplomacy (NCD) database containing more than 250,000 records belonging to the United States government; and

b. Article 134 (18 U.S.C. § 641) and Article 92:

(1) Specification 8 of Charge II: the United States Southern Command database and Specification 2 of Charge III involving a violation of a lawful general regulation by adding unauthorized software to a Secret Internet Protocol Router Network computer;

extract the CIDNE-I and CIDNE-A sigacts. These were successive access/extractions that constitute separate and distinct 18 U.S.C. §641/Article 134 offenses for findings under the first *Quiroz* factor. The charges do not misrepresent or exaggerate PFC Manning's criminality or unreasonably increase his punitive exposure. There is no evidence of prosecutorial over-reaching. The Defense motion to merge specifications 4 and 6 of Charge II for findings is denied.

2. Specifications 5 and 7 of Charge II.

(a) The parties agree that PFC Manning transmitted the CIDNE-I and CIDNE-A records on the same day. The gravamen of the 18 U.S.C. §793(e)/Article 134 offenses in specifications 5 and 7 of Charge II, is the willful transmission of national defense information to a person not entitled to receive it. Specification 5 of Charge II charges the willful transmission of the portion of CIDNE-I database containing more than 380,000 records belong to the United States government. Specification 7 of Charge II charges the willful transmission of the portion of the CIDNE-A database containing more than 90,000 records belonging to the United States government. These are separate matters of defense information. The transmission of each constitutes a violation of 18 U.S.C. §793(e)/Article 134, UCMJ under the first *Quiroz* factor. The fact that the transmissions may have occurred at the same time or simultaneously is irrelevant for unreasonable multiplication of findings analysis. Charging the volume of national defense information transmitted from both the CIDNE-I and CIDNE-A databases in two separate specifications does not misrepresent or exaggerate PFC Manning's criminality or unreasonably increase his punitive exposure. The prosecution has not over-reached in charging PFC Manning as it has in specifications 5 and 7 of Charge II. Considering all of the *Quiroz* factors, the Court does not find specifications 5 and 7 of Charge II a UMC for findings. The Defense motion to merge these offenses for findings is denied.

(b) The Government does not object to the Court treating these offenses as one for sentencing. As such, the Court will treat specifications 5 and 7 as a UMC for sentencing.

UMC for sentencing - merge specifications 4, 5, 6, and 7 of Charge II, specifications 8 and 9 of Charge II, specifications 12 and 13 of Charge II, and specifications 2, 3, and 4 of Charge III with specifications 8, 12, and 16 of Charge II respectively. The *Quiroz* factors apply differently to determining whether there is a UMC for findings and for sentencing.

(a) The Government concedes that specification 4 of Charge III is UMC for sentencing with specification 16 of Charge II. In this case, PFC Manning committed the Article 92 violations in specifications 2 and 3 of Charge III as part of a connected chain of events involving the SPKC offenses in specifications 8 and 12 of Charge II, respectively. For sentencing purpose, the Court applied the *Quiroz* factors and finds each pair of specifications (specification 2 of Charge III/specification 8 of Charge II; specification 3 of Charge III/specification 12 of Charge II; specification 4 of Charge III/specification 16 of Charge II) a UMC for sentencing.

(b) With respect to the 18 U.S.C. §641/Article 134 offenses in specifications 4, 6, 8, and 12 of Charge II and the 18 U.S.C. §793(e)/Article 134 offenses in specifications 5, 7, and 9 of Charge II and the 18 U.S.C. §1030(a)(1)/Article 134 offense in specification 13 of Charge II, the

(2) Specification 12 of Charge II: the Department of State Net-Centric Diplomacy database and Specification 3 of Charge III involving a violation of a lawful general regulation by adding unauthorized software to a Secret Internet Protocol Router Network computer;

(3) Specification 16 of Charge II involving a portion of the United States Forces – Iraq Microsoft Outlook / Sharepoint Exchange Server Global Address List belonging to the United States government and Specification 4 of Charge III involving a violation of a lawful general regulation by using an information system in a manner other than its intended purpose.

On 1 August 2013, the Government filed a response to each of the three defense motions (AE 632-634) opposing the Defense motions except for the Motion to consider specifications 5 and 7 of Charge II as UMC for sentencing and specification 4 of Charge III as UMC for sentencing with specification 16 of Charge II.

The Law:

1. Military law recognizes the concepts of UMC for findings and UMC for sentencing. Non-exclusive factors considered by courts in determining whether offenses are a UMC for findings or sentence include whether: (1) each charge and specification is aimed at distinctly separate criminal acts; (2) the number of charges and specifications misrepresent or exaggerate the accused's criminality; (3) the number of charges and specifications unreasonably increases the accused's punitive exposure; and (4) there is any evidence of prosecutorial overreaching or abuse in the drafting of charges. *United States v. Quiroz*, 55 M.J.334 (C.A.A.F. 2001).

2. Charges that are not a UCM for findings may a UCM for sentencing where the nature of the harm requires a remedy that focuses more appropriately on punishment. *United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012).

3. Successive withdrawals of funds from different accounts through stolen automatic teller machine cards are separate offenses even if the withdrawals occurred at substantially the same time and place. *U.S. v. Aquino*, 20 M.J. 712 (A.C.M.R. 1985); *see also U.S. v. Kulathungam*, 1999 WL 35021445 (Army Ct. Crim. App. 1999).

Conclusions of Law:

UMC for findings - merge specifications 4 and 6 of Charge II and specifications 5 and 7 of Charge II:

1. **Specifications 4 and 6 of Charge II.** PFC Manning had the specific intent to deprive the Government of the use and benefit of the records at the time he extracted the CIDNE-I sigacts on or about 3 January 2010. PFC Manning had the specific intent to deprive the Government of the use and benefit of the records at the time he extracted the CIDNE-A sigacts, on or about 7 January 2010. The Court does not find that PFC Manning stole and purloined the CIDNE-I and CIDNE-A sigacts on the same day. Even if the Court did find that the stealing and purloining of the CIDNE-I and CIDNE-A sigacts occurred on the same day, the logic of *Aquino* and *Kulathungam* is persuasive. As in these cases, PFC Manning had to access separate databases to

Court finds that the 18 U.S.C. §793(e)/Article 134 and the 18 U.S.C. §1030(a)(1)/Article 134 transmission offense involve the same or a subset of the records that formed the *res* of the 18 U.S.C. §641/Article 134 SPKC offenses. The Court ruled in AE 78 that these specifications were not a UMC for findings. Under the unique facts of this case, the Court applies the *Quiroz* factors and finds that punishing specifications 4, 6, 8, and 12 of Charge II separately from specifications 5, 7, 9, and 13, respectively, of Charge II unreasonably increases PFC Manning's punitive exposure. As such, the Court will treat each pair of specifications (4 and 5 of Charge II; 6 and 7 of Charge II, 8 and 9 of Charge II, and 12 and 13 of Charge II) as one for sentencing purposes. These offenses are not a UMC for findings, thus merger of the offenses is not appropriate. Each specification remains as a stand-alone offense for findings.


(c) The Government concedes specifications 5 and 7 of Charge II are UMC for sentencing, however, applying the *Quiroz* factors, the Court finds that specifications 4 and 6 of Charge II are aimed at distinctly separate criminal acts and the Government has not over-reached or exaggerated PFC Manning's criminality or unfairly increased his punitive exposure. Specifications 4 and 6 of Charge II are not a UMC for sentencing. Specifications 5 and 7 of Charge II are UMC for sentencing with specifications 4 and 6 of Charge II, respectively. The resulting 20 year maximum sentence for all four specifications does not exaggerate the accused's punitive sentencing exposure.

Ruling: The Defense Motions to merge specifications for unreasonable multiplication of charges (UMC) for findings and sentence is **GRANTED IN PART**. The Court will treat the following pairs of specifications as one each for sentencing purposes:

1. specification 2 of Charge III with specification 8 of Charge II;
2. specification 3 of Charge III with specification 12 of Charge II;
3. specification 4 of Charge III with specification 16 of Charge II;
4. specification 4 of Charge II with specification 5 of Charge II;
5. specification 6 of Charge II with specification 7 of Charge II;
6. specification 8 of Charge II with specification 9 of Charge II;
7. specification 12 of Charge II with specification 13 of Charge II.

The Court's ruling reduces the maximum confinement that may be imposed from 136 years to 90 years.

So **ORDERED** this 6th day of August 2013.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit